IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HALO CREATIVE & DESIGN LIMITED, a Hong Kong company, HALO TRADEMARKS LIMITED, a Hong Kong company and HALO AMERICAS LIMITED, a Hong Kong company,	))))))	
	)	Civil Action No. 1:14-cv-08196
Plaintiffs,	))	
	)	Judge Harry D. Leinenweber
v.	))	
	)	Magistrate Judge Susan E. Cox
COMPTOIR DES INDES INC., a Quebec corporation, CDI INTERNATIONAL, CDI FURNITURE,	)))))	
Defendants.	)	

COMPTOIR DES INDES, INC.'S MOTION TO EXCLUDE, IN PART, DAMAGES OPINIONS OF MICHAEL D. PAKTER

Comptoir des Indes, Inc., a Quebec corporation, d/b/a CDI International and/or CDI Furniture ("CDI"), by counsel, respectively moves the Court to exclude certain opinions regarding damages proffered by the Plaintiffs' (collectively "Halo") expert Michael D. Pakter. In support of this Motion, CDI states:

1.   On November 7, 2017, Halo served Mr. Pakter's Expert Report on Plaintiffs' Damages. Halo served Mr. Pakter's Supplemental Expert Report on December 22, 2017. The Supplemental Report revised some calculations found in the original report, but otherwise adopts the original Report. (Both reports are referred to collective as the "Pakter Report" and are attached hereto as **Sealed**

Exhibits 1 and 2) CDI also relies in part on Mr. Pakter's deposition transcript.

(**Sealed Exhibit 3**)[1]

2.   The Court serves a gatekeeping role to ensure expert reports contain relevant and reliable opinions that will assist the jury in its fact-finding duties. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993); *United States v. Parra*, 402 F.3d 752, 758 (7th Cir. 2005) ("At this point, Rule 702 has superseded *Daubert*, but the standard of review that was established for *Daubert* challenges is still appropriate."). Several categories of damages opinions in the Pakter Report fail the *Daubert* standards for admissibility. The Court should exclude those categories at trial.

3.   The Pakter Report includes opinions on five different categories of damages, summarized as categories (a)-(e) below. CDI moves to exclude categories (b)-(d).

> (a)   Halo's Lost Profits – CDI's Sales of (alleged) Infringing Products;
>
> (b)   Halo's Lost Profits – Halo's Discontinued Products;
>
> (c)   CDI's Sales Attributable to the (alleged) Infringement – CDI's Sales of Non-Infringing Products;
>
> (d)   CDI's Increased Profitability from Use of Halo's Designs; and
>
> (e)   CDI's Profits – CDI's Sales of Infringing Products.

4.   The Copyright Act recognizes the first and last categories of damages, but not categories (b)-(d). 17 U.S.C. § 504.

---

[1] The parties filed an Agreed Motion for leave to file their memoranda and exhibits under seal. (Dkt. 171)

5. Categories (b)-(d) lack supporting evidence, are speculative and unreliable, and should be excluded at trial.

6. CDI incorporates by reference its Memorandum of Law in Support of Motion to Exclude, in Part, Damages Opinions of Michael D. Pakter, filed concurrently herewith.

WHEREFORE, CDI moves the Court to grant this motion, exclude Mr. Pakter's opinions concerning, and any evidence offered by Halo in support of, claimed damages in categories (b)-(d) described above, and grant all other just and proper relief.

Dated: January 10, 2018

Respectfully submitted,

FISHERBROYLES LLP

/s/ Alastair J. Warr
FisherBroyles LLP
203 North LaSalle, Suite 2100
Chicago, IL 60601
Mailing Address: P.O. Box 666
Zionsville, IN 46077
Telephone: 317.407.5260
Email: alastair.warr@fisherbroyles.com

Bradley P. Nelson
FisherBroyles LLP
One North Franklin Street, Suite 3200
Chicago, IL 60606
Telephone: 312.300.4005
Email: brad.nelson@fisherbroyles.com

Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel by filing with the Court's ECF system on January 10, 2018.

Richard D. Harris
Barry R. Horwitz
Jacqueline V. Brousseau
GREENBERG TRAURIG, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601

/s/ Alastair J. Warr
Counsel for Defendants